

**ILGA Asia, Equite
Sri Lanka and Equal
Ground's Submission of
Inputs for the report on
the Impact of thematic
reports presented by the
UN Special Rapporteur
on Torture**

2021

August 31, 2021

Re: Call for input to thematic report of the SR Torture to HRC49 (March 2022): “Impact of thematic reports presented by the Special Rapporteur on Torture”

This joint submission made by ILGA Asia, Equite Sri Lanka and Equal Ground, describes the nature and extent of torture and ill-treatment against LGBTI persons in Sri Lanka, reasons for its continuous prevalence, and observed changes and impacts in relevance to the two thematic reports A/73/207¹ and A/74/148².

ILGA Asia is an umbrella membership organisation representing more than 170 LGBTI organisations in the Asian region to advance SOGIESC rights protection. ILGA Asia has been actively involving in Sri Lanka since 2017 through several initiatives. In 2020, ILGA Asia collaborated with members and partners in Sri Lanka to conduct a country analysis updating the situation, challenges and progress of SOGIESC rights protection of LGBTI persons surviving through the COVID-19 pandemic in the country.

Equite Sri Lanka is a trailblazer in the field of youth advocacy and leadership in SRHR. As one of the few local organisations that exist for youth, LGBTI rights, PLHIV, Women and Children, and entirely led by youth, Equite plays a strategic role in accessing and amplifying youth voices. Equite leverages youth energy, creativity and expertise to improve policy implementation, maximize capacities, and advocacy and awareness about SRHR and youth leadership in Sri Lanka.

Equite Sri Lanka also works towards advocating legal rights protection for LGBTI persons through collecting evidence and information of real cases in which LGBTI community members face violence, stigma and discrimination due to their sexual orientation and gender identity. In 2020, Equite Sri Lanka submitted a mid-review report on UPR and other UN mechanisms on the issues of human rights violations faced by the LGBTI community in Sri Lanka.

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- 1 Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/232/16/pdf/N1823216.pdf?OpenElement>
 - 2 Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/pdf/N1921444.pdf?OpenElement>

EQUAL GROUND (EG) is one of the first and most influential organisations in Sri Lanka that advocates for the economic, social, cultural, civil, and political rights of the LGBTIQ community, together with allies. Since its inception in 2004, EG has been working to achieve equality for diverse sexual orientations, gender identities and expressions (SOGIE) and rights for the LGBTI community in Sri Lanka through community mobilization and empowerment, psychological and legal counseling services provision, research and advocacy. The work of EG is island-wide and is conducted in all three local languages—English, Sinhala, and Tamil.

I. Reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The observations in the report A/73/207³ captured how discrimination perpetuated by the criminalisation and harassment based on conventional social norms regarding gender and sexuality increases the risk of torture especially for LGBTI people, which is highly relevant in the Sri Lankan context.

The Sri Lankan Penal Code criminalises “carnal intercourse against the order of nature” under Section 365. Section 365A in the same Penal Code⁴ provides that “any person who, in public or private, commits or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross decency with another person, shall be guilty of an offence and punished with rigorous imprisonment for 10 years”. While “against the order of nature” and “acts of gross indecency” are open to interpretation, these laws are commonly understood in Sri Lanka to criminalise same sex-relations between consenting adults, including in private spaces. The Penal Code (Amendment) Act No. 22 of 1955 changed the language in article 365A, making gross indecency between male persons gender-neutral, thus extending the law against same-sexual activity among women as well as transgender and non-binary Sri Lankans.

Further, Section 399 of the Penal Code⁵ on Cheating by Impersonation criminalizes cheating, “by pretending to be some other person.” It is abused by targeting transgender and gender non-conforming Sri Lankans. Furthermore, legislation such as Vagrants Ordinance and the Brothels Ordinance has also been used by the police to target transgender and gender non-conforming Sri-Lankans. These ordinances have also been used to marginalise and discriminate against those involved in sex work including members of the LGBTI community.

3 Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/232/16/pdf/N1823216.pdf?OpenElement>

4 Penal Code (Ordinance No. 2 of 1883), Sri Lanka, https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=67628

5 Ibid

These laws have been used by those in positions of authority, especially law enforcement officials. In the last few years, Sri Lankan police have raided hotels and other locations to arrest people for offenses including consensual same-sex conduct⁶. A police performance report⁷ indicates that in 2018 police brought charges against nine men for “homosexuality” arrested in five such raids. Those arrested have faced abuse at the hands of the police including being whipped⁸. In three of the cases, the court ordered three men to undergo HIV tests without their consent. The results of these tests were also made public in court.

Police assume all LGBTI people are sex workers. Police have also used the threat of arrest to assault, harass and sexually and monetarily extort LGBTI+ people⁹. LGBTI people also face problems while making complaints to the police as there is resistance in accepting their complaints. They are treated like criminals even when they are the ones being victimized¹⁰.

Stories and reports also indicate that Sri Lankan authorities conduct forced physical examinations on LGBTI people to provide proof of homosexual conduct¹¹. These forced anal and vaginal examinations are a form of sexual violence as well as cruel, inhumane, and degrading treatment that amount to torture.

Forced anal exams, often involve doctors and medical personals who insert their finger or other objects to determine whether the person has engaged in receptive anal intercourse. These examinations are rooted in discredited theories that anal penetration can be determined by the tone of the anal sphincter.

In the thematic report A/73/207, it recommended state parties to abolish “violent or discriminatory political narratives, policies and practices based on stigmatisation”, and take efforts to prevent torture and ill-treatments against LGBTI persons, however, the Sri Lankan government has long resisted removing discriminatory Penal Code provisions that prohibit same-sex relations. And in practice, the Penal Code and other criminal law provisions are regularly used by the law enforcement sector to discriminate against transgender people and have a pernicious impact on others due to their actual or perceived sexual orientation. As a result, LGBTI persons in Sri Lanka continues to face a substantial risk of torture and ill-treatment due to the violent and discriminatory policies and practice.

6 Groundviews, Arrests and Harassment of LGBTIQ Persons (October 22,2020), <https://groundviews.org/2020/10/22/arrests-and-harassment-of-lgbtqi-persons/>

7 Performance Report 2018 (Sri Lanka Police, 2019), <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2018.pdf>

8 Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions (Human Rights Watch, 20 October 2020), <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions#>

9 Sri Lanka 2018 Human Rights Report, United States Department of State, Bureau of Democracy, Human Rights and Labor, <https://www.state.gov/wp-content/uploads/2019/03/SRI-LANKA-2018.pdf>.

10 Sri Lanka: End discrimination against LGBTI people (Amnesty International), <https://www.amnesty.org/en/latest/news/2019/12/spectrum-sri-lanka-lgbti/>

11 Human Rights Watch (n 2), <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions#Newswire>, Justice Minister looks into allegations of forced examinations on privates of LGBT persons (October 31, 2020), https://www.newswire.lk/2020/10/31/justice-minister-looks-into-allegations-of-forced-examinations-on-privates-of-lgbt-persons/?fbclid=IwAR12OhgtPqlws9HSmrjJliOQP29lu6eH9j_7MqvDPo6pgtLtV8yY1g35d2c

II. Relevance of the prohibition of torture and ill-treatment to the context of domestic violence

The observation in report A/74/148¹² in which the issue of torture is framed within the context of domestic violence is very relevant to LGBTI people inside and outside of Sri Lanka. The observation explicitly mentions the issues of “honour crimes” and “conversion therapy” in relation to LGBTI people. The observation is well appreciated as these issues continue to cause suffering to the lives of LGBTI people. Thus, the observation is highly relevant to Sri Lanka. Specifically for conversion therapy, there have been various instances in Sri Lanka of the misplaced intention to cure LGBTI people¹³ through unscientific, medically induced or faith-based practices. Ayurvedic practitioners in Sri Lanka offer their own forms of conversion therapy and practice it openly¹⁴. Newspapers openly publish advertisements of such practices and practitioners are allowed to operate with complete impunity because of the legal gaps that do not prohibit such practices.

The report also mentions forced marriages, sexual violence, physical violence, and psychological and emotional suffering as harmful practices in the context of domestic violence. However, the discussion of these issues are limited to girls and women while they continue to be relevant to harm girls, women as well as trans and gender diverse people globally.

Many Sri Lankans with diverse SOGIESC experience forced marriages. This includes situations where these individuals are forced into marriage using physical violence and pressure as well as emotional pressure to get them married without their consent and choice. LGBTI people in Sri Lanka also commonly experience emotional violence, especially from family members¹⁵. Physical violence, including sexual violence from family members is also quite common in Sri Lanka. LGBTI people have also shared stories of economic violence where they are denied ownership/transfer of property as a punishment for their non-normative lifestyles. LGBTI people, particularly LBT women, have also shared how families practice “corrective rape”, which is the practice of forcing LGBTI people to have non-consensual sex with someone of the opposite sex to change their sexuality.

It is important that these issues are looked beyond the binary framework as they continue to affect the lives of LGTBI people.

12 Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/pdf/N1921444.pdf?OpenElement>

13 A complaint has been lodged with the Human Rights Commission against the police training workshop which used pseudo-peddlers to spread false information about Samaritans (Lankan News Web, 11 August 2021), https://www.lankanewsweb.net/sinhala/127-general-news/90329-complaints-lodged-with-hrcsl-against-workshop-at-sl-police-promoting-homophobia?fbclid=IwAR28w1EWYfJ_EswtWwDRctQ0GeCQRfLNx_GSY7LZwHnzVwGI0P3jK4CXfBk

14 Zahara Dawoodbhoy, 'Homosexuality Is Wrong!': The Chilling Reality of Conversion Therapy In Sri Lanka (Roar Media, 11 Apr 2019), <https://roar.media/english/life/srilanka-life/reality-conversion-therapy-sri-lanka>.

15 EconomyNext, Sri Lanka's violence against women is a shadow pandemic (December 3, 2020) <https://economynext.com/sri-lankas-violence-against-women-is-a-shadow-pandemic-76550/>

With regards to the impacts of this particular thematic report, the report recommended that states refrain from promoting violent, discriminatory, and dehumanising narratives which perpetuate domestic violence. However, in Sri Lanka the government continues to use queerphobic narratives in political discourse. In the 2020 Parliamentary elections, several candidates made queerphobic statements. For example, Samagi Jana Balavegaya (SJB) candidate Champika Ranawaka in an interview claimed that, “there is no biological basis for same-sex behaviour.”¹⁶ Another SJB candidate Kavinda Jayawardana claimed that “homosexuality is a mental illness.”¹⁷

The thematic report A/74/148¹⁸ recommended states prohibit and prevent honour crimes, forced marriages and conversion therapy. However, the state has not taken any steps in this regard. Instead, conversion therapy is open and widely practised by many practitioners in the state with complete impunity from the government.

The report also recommended the states to address the challenge of domestic violence, by taking legislative, protective, judicial, structural, and other measures without any discrimination on grounds of gender, race, language, religion, sexual orientation, age, health, disability, and other such grounds. However, the Prevention of Domestic Violence Act, 2005 in Sri Lanka could in principle, be used to protect the same-sex partners from violence, but the Penal Code provisions criminalising same-sex sexual relations as well as a cultural queerphobia, act as a deterrent for LGBTI people to file a complaint on domestic violence. Aside from the existing legislation and its lack of effectiveness pertaining to issues of LGBTI people, the Sri Lankan government has taken no active steps to provide protection to LGBTI people on these issues.¹⁹

16 ILGA Asia interview with undisclosed organisations

17 Ucanews, Sri Lankan poll candidate under fire for homophobic remarks (July 31, 2020), <https://www.ucanews.com/news/sri-lankan-poll-candidate-under-fire-for-homophobic-remarks/88986#>

18 Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/214/44/pdf/N1921444.pdf?OpenElement>

19 ILGA Asia interview with undisclosed organisations.